

INTERLOCAL AGREEMENT BETWEEN THE
CITY OF SUNNYSIDE AND
SUNNYSIDE VALLEY IRRIGATION DISTRICT
FOR THE
16TH STREET STORMWATER SYSTEM
IMPROVEMENT PROJECT

I. PREAMBLE

This Interlocal Agreement (hereinafter "AGREEMENT") is by and between the City of Sunnyside, a municipal corporation (hereafter "CITY") whose principal offices are located at 818 E. Edison Avenue, Sunnyside, WA 98944 and the Sunnyside Valley Irrigation District, a quasi-municipal corporation (hereafter "DISTRICT") whose principal offices are located at 120 S. 11th Street, Sunnyside, WA 98944. Both entities are governmental subdivisions of the State of Washington and hereinafter referred to as the "PARTIES".

II. RECITALS

The CITY has successfully applied for and has been awarded a grant in the amount of \$848,181.00 by the Washington State Department of Ecology for the 16th Street Canal Piping Improvements Project with matching funds of \$149,679.00. The DISTRICT will perform in-kind services as described in Exhibit B in the amount of \$33,854.00, in which no reimbursement will be paid to the DISTRICT. The CITY will pay the remaining match in the amount of \$115,825, for a total project cost of \$997,860.00.

The CITY has entered into an agreement with the Department of Ecology (Exhibit A) to install approximately 1,250 linear feet of 84" perforated corrugated metal pipe along 16th Street between Yakima Valley Highway and E. Edison Avenue (the "Pipeline Installation"). The Pipeline Installation (excluding adjacent pre-treatment structures designed and installed under this project scope) will be owned by the DISTRICT for the primary purposes of carrying DISTRICT irrigation return flows and agricultural runoff through the DISTRICT drainage system and eventually back to the mainstem Yakima River. The CITY shall discharge collected storm water from city streets and adjacent impervious surfaces into newly installed pre-treatment structures and/ or surface infiltration swells. Any storm water that is collected and treated will be discharged and conveyed through the Pipeline Installation municipal and shall be deemed storm water subject to federal environmental regulations, including but not limited to National Pollutant Discharge Elimination System permitting requirements ("Municipal Storm Water"), and also subject and according to the Department of Ecology Grant Agreement, and all portions of this Agreement. The DISTRICT shall perform the tasks outlined in Exhibit B of this AGREEMENT and shall also allow CITY discharges of Municipal Storm Water into and through the Pipeline Installation as hereinbelow provided.

The PARTIES desire to enter into an AGREEMENT for the DISTRICT's performance of those specific tasks and duties set forth under "Description of Work" on the attached Exhibit B, as well as to establish the terms and conditions under which the CITY shall discharge Municipal Storm Water into the Pipeline Installation upon its completion. The CITY will receive and submit for reimbursement from the Department of Ecology any eligible costs incurred in performance of work specified in the Grant Agreement between the CITY and the Department of Ecology, including those portions of such work as are being undertaken by the DISTRICT hereunder and specified in Exhibit B. The Interlocal Cooperation Act, R.C.W. 39.34, further authorizes the PARTIES hereto to enter into this AGREEMENT.

III. AGREEMENT

1. Purpose and Period of Performance

The purpose of this AGREEMENT is to provide a mechanism for the DISTRICT to provide in-kind services set forth on Exhibit B and consistent with the CITY's duties under the Grant Agreement between the CITY and the Department of Ecology.

The period of performance of this AGREEMENT shall commence on July 1, 2015 and be completed on June 30, 2017 (except with respect to any future CITY use, treatment and discharge into Municipal Storm Water into the Pipeline Installation), unless terminated or modified as provided herein.

2. Scope of Works

The CITY will provide or perform all environmental assessments, analyses, engineering designs and regulatory compliance requirements specified under the Grant Agreement and reasonably necessary for the DISTRICT's performance of those tasks identified under "Scope of Work," Exhibit B., Except for those specific tasks identified under "Scope of Work," Exhibit B, SVID shall not be required to perform any further duties or to assume any obligations for which CITY is obligated under the Grant Agreement including, without limitation, Task Nos. 1, 2, 3 and 4 and compliance requirements set forth in Sections 2 through 6 thereof.

3. City Representative

Shane Fisher, Public Works Director
City of Sunnyside Public Works Department
818 E. Edison Ave.
Sunnyside, WA 98944
509-837-5206
sfisher@sunnyside-wa.gov

4. Sunnyside Valley Irrigation District Representative

Ron Cowin, P.E. Assistant Manager - Engineering
Sunnyside Valley Irrigation District
Office Location: 1105 Yakima Valley Highway
Sunnyside, WA 98944
509-837-6980
cowinr@svid.org

5. Quality Assurance

Technical assistance, proposed practices, or project designs that do not meet the project standards may be accepted if approved in writing by the Department of Ecology, or if approved in writing by a licensed professional engineer (PE).

6. Documentation of Costs and Maintenance Records

DISTRICT shall maintain all books, documents, receipts, invoices and records including payroll records necessary to sufficiently and properly reflect its expenditure of grant funds incurred in its performance of

tasks identified under "Scope of Work," Exhibit B. The accounting records must provide for separate recording and reporting of all receipts and expenditures related to this AGREEMENT. Financial records pertaining to matters authorized by this AGREEMENT are subject to inspection and audit by the representatives of the CITY or the State Auditor upon request. Financial records shall be preserved and made available to the CITY, the Department of Ecology, or their agents according to Washington State record retention requirements.

7. Easements and Rights-of-Way

The CITY shall be solely responsible for obtaining, at its sole cost, any and all easements, rights-of-way or similar real property possessory and use rights or permissions as necessary for the lawful siting, construction, installation and future operation, maintenance and repair of the Pipeline Installation. All such real property possessory and use rights shall be duly executed and recorded in Yakima County and shall also name or be freely assignable to the DISTRICT.

8. Assignment

DISTRICT shall not assign any portion of the services provided within the terms of this AGREEMENT without obtaining prior written approval of the CITY. All terms and conditions of the AGREEMENT shall apply to any approved assignment related to this AGREEMENT.

9. Nondiscrimination

The DISTRICT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, creed, marital status, age, Vietnam era or disabled veteran status, or the presence of any sensory, mental, or physical handicaps which includes persons known to have HIV/AIDS virus. Such action shall include, but not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensations, and selection for training, including apprenticeship. The DISTRICT agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Department of Social and Health Services setting forth the provision of the Equal Opportunity Clause.

The DISTRICT will, in all solicitations or advertisements for employees placed by or on behalf of the DISTRICT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, creed, marital status, age, Vietnam era or disabled veteran state, or the presence of any sensory, mental, or physical handicap which includes persons known to have HIV/AIDS virus.

10. Compliance with Laws

10.1. The DISTRICT shall comply with all federal, state, and local laws, statues, ordinances, rules and regulations applicable to the performance of the AGREEMENT. The DISTRICT agrees to comply with all provisions of the Americans with Disabilities Act and all regulations interpreting or enforcing such act.

10.2. The CITY shall comply with all federal, state, and local laws, statues, ordinances, rules and regulations applicable to the performance of the AGREEMENT, which, in the event the CITY elects to discharge Municipal Storm Water into the Pipeline Installation, shall include the CITY's procurement of and continuing compliance with all permitting requirements under a duly issued NPDES permit (a "Discharge Permit") and subject to the below additional requirements.

- 10.2.1. Discharge of Municipal Storm Water shall occur only at the following discharge location(s) identified within the construction drawings and consistent with the Discharge Permit..
- 10.2.2. Discharge of Municipal Storm Water shall occur only after prior written notice has been given to and agreed upon by the DISTRICT. Said notice shall include the proposed start date and expected duration of the discharge. The DISTRICT shall promptly grant permission to CITY to proceed with such discharge of Municipal Storm Water, or, in the event such discharge conflicts with any DISTRICT operational requirement, the DISTRICT shall cooperate with the CITY to schedule an alternative, mutually agreed time for such discharge.
- 10.2.3. The CITY's use, treatment and discharge of Municipal Storm Water shall at all times be fully compliant with all applicable federal, state, and local laws governing treatment and discharge of waters, including without limitation, the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, Chapter 90.48 Revised Code of Washington and Chapter 173 Washington Administrative Code (collectively, the "Clean Water Laws"). CITY shall be responsible for obtaining and maintaining any and all permits or other approvals, including a Discharge Permit, as may be required under the Clean Water Laws.
- 10.2.4. The CITY's use, treatment and discharge of Municipal Storm Water shall not invalidate, be inconsistent with or otherwise jeopardize the DISTRICT's continuing exemptions from the Clean Water Laws' NPDES permitting requirements applicable to irrigation return flows and agricultural runoff.
- 10.2.5. Municipal Storm Water shall be discharged in a manner consistent with any and all water quality standards or requirements, including protection of human health, stockwater, agricultural use, and the environment.
- 10.2.6. Discharge of Municipal Storm Water into the Pipeline Installation shall be conducted without cost to the DISTRICT and without injury, impairment, interference or damage to any DISTRICT owned or operated irrigation and drainage infrastructure or DISTRICT operations.
- 10.2.7. The DISTRICT may, at any time:
 - 10.2.7.1. Collect, test and evaluate samples of the Municipal Storm Water at their sources or at the discharge locations identified in the Discharge Permit. In connection therewith, CITY hereby grants and conveys to the DISTRICT reasonable rights of ingress and egress to real property under the CITY's ownership or control as reasonably necessary to facilitate the DISTRICT's exercise of its rights under this provision; and
 - 10.2.7.2. Obtain from CITY data, reports or other information concerning the use, treatment and discharge of the Municipal Storm Water as CITY may be required to compile or maintain under the Discharge Permit and/or Clean Water Laws, including without limitation, NPDES monitoring reports.
- 10.2.8. The CITY shall immediately provide written notice to the DISTRICT in the event the CITY fails to comply with requirements or conditions of the Discharge Permit (including, without limitation, upon notice to the CITY of such failure by the U.S. Environmental

Protection Agency or the Washington Department of Ecology), or in the event of any modification, change or cancellation of the Discharge Permit during the term hereof.

10.2.9. In the event the CITY fails to fully comply with any provision of this Paragraph 10.2, including sub-paragraphs thereto, The DISTRICT shall, in its sole discretion, be entitled to immediately revoke and terminate the CITY's herein license and permission for discharge of Municipal Storm Water into and through the Pipeline Installation.

10.2.10. The CITY's contractual obligations under Paragraph 10.2, including sub-paragraphs thereto, shall survive this AGREEMENT and shall continue in full force and effect at all times as the CITY may hold a Discharge Permit or otherwise be subject to Clean Water Laws in connection with any discharge into or use of the Pipeline Installation.

11. Hold Harmless and Indemnification

11.1. The CITY shall not be liable under any contract or obligations of the DISTRICT, except as otherwise provided pursuant to this AGREEMENT, or for any act or omission of the DISTRICT or its officers or agents, and the DISTRICT agrees to defend, indemnify, and hold harmless the CITY from any and all losses, damages, costs and expenses (including reasonable attorney's fees) that are caused by or arise out of any omission, fault, negligence or other misconduct by the DISTRICT, its employees, independent contractors or volunteers in connection with this AGREEMENT.

11.2. The DISTRICT shall not be liable under any contracts or obligations of the CITY, except as otherwise provided pursuant to this AGREEMENT, or for any act or omission of the CITY or its officers or agents, and the CITY agrees to defend, indemnify, and hold harmless the DISTRICT from any and all losses, damages, costs and expenses (including reasonable attorney's fees) that are caused by or arise out of any omission, fault, negligence or other misconduct by the CITY, its employees, independent contractors or volunteers in connection with this AGREEMENT, including, without limitation, in the CITY's exercise of its herein license and permission for discharge of Municipal Storm Water into and through the Pipeline Installation.

11.3. With respect only to those portions of this AGREEMENT subject to RCW 4.24.115 and in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the CITY and DISTRICT, including their respective officers, agents and employees, the PARTIES' respective liabilities, including the duty and cost to defend, hereunder shall be only to the extent of their respective negligence.

11.4. The CITY and the DISTRICT agree to notify each other of claims made related to this AGREEMENT.

11.5. Solely for the purposes of these indemnification and hold harmless provisions, each party waives immunity under Title 51 (Industrial Insurance) of the Revised Code of Washington and acknowledges that this waiver was mutually negotiated by both PARTIES.

11.6. These indemnification and hold harmless provisions shall survive the expiration or termination of this AGREEMENT.

12. Insurance – Workers' Compensation

The PARTIES mutually agree to comply with all State requirements pertaining to Workers' Compensation Insurance.

13. Amendments to Agreement

The PARTIES hereby further agree that this AGREEMENT cannot be amended or modified without the written concurrence of both PARTIES.

14. Termination

Either party may terminate this AGREEMENT upon giving the other party 30 days advance written notice. If this Agreement is so terminated, the PARTIES shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

15. Duration of Agreement

As evidenced by signatures herein, the PARTIES accept the terms and conditions of this AGREEMENT. This AGREEMENT is in effect from the date of August 1, 2015 to December 31, 2016.

16. Property and Equipment

Upon termination or non-renewal of this AGREEMENT, all property purchased by the CITY, in furtherance of this AGREEMENT, shall be returned to the CITY, all property purchased by the DISTRICT, in furtherance of this AGREEMENT, shall remain the property of the DISTRICT.

17. Independent Capacity

Each party to this AGREEMENT shall be responsible only for its own acts and omission and those of its own officers, employees and agents. The PARTIES to this AGREEMENT shall not be responsible for the acts and omissions of entities or persons not party to this AGREEMENT.

18. Modification

No unilateral changes, additions or erasures of any portion of this AGREEMENT shall be valid or binding upon either party. There shall be no modification of the AGREEMENT, except in writing, executed by both PARTIES with the same formalities as this present instrument.

19. Venue and Choice of Law

Any action at law, suit in equity or other judicial proceeding for the enforcement of this AGREEMENT or any provisions thereof shall be instituted only in the court of the State of Washington, County of Yakima. It is mutually understood and agreed that this AGREEMENT shall be governed by the laws of the State of Washington, both as to interpretation and performance.

20. Dispute Resolution

In the event of a dispute regarding the enforcement, breach, default, or interpretation of this Agreement, the City Manager for the City of Sunnyside and the Director of the Sunnyside Valley Irrigation District, or their respective designees, shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the Parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, with all parties waiving the right of a jury trial upon trial de novo,

with venue placed in Yakima, Yakima County, Washington. The substantially prevailing party shall be entitled to its reasonable attorney fees and costs as additional award and judgment against the other.

21. Interlocal Cooperation Act Provisions. All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by the CITY, shall remain the sole property of the CITY. All vehicles, equipment, inventory and any improvements thereto and non-fixture improvements to the premises purchased by the DISTRICT, shall remain the sole property of the DISTRICT. All personnel utilized by the CITY in the fulfillment of this Agreement shall be solely within the supervision, direction and control of the CITY and shall not be construed as "loan servants" or employees of the DISTRICT. The City Manager of the City of Sunnyside, Washington, shall be designated as the Administrator of this Interlocal Agreement.

It is not intended that a separate legal entity be established to conduct this cooperative undertaking under this agreement, nor does this Agreement contemplate the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

A copy of this Agreement shall be filed with the Yakima County Auditor's office or posted on the City' or District's websites as required by RCW 39.34.040.

22. Integration Clause

This instrument embodies the whole agreement of the PARTIES. There are no promises, terms, conditions or obligations other than those constrained herein; and this AGREEMENT shall supersede all previous communications, or agreements, either verbal or written between the PARTIES.


Dated 31 day of May, 2016

Dated 31 day of May, 2016

SUNNYSIDE VALLEY IRRIGATION DISTRICT

CITY OF SUNNYSIDE


Lori Brady, District Manager


Shane Fisher, Public Works Director
On behalf of
Donald D. Day, City Manager

CITY CONTRACT NO: A-2016-45
RESOLUTION NO: N/A
COUNCIL MTG: N/A